

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA, )  
Plaintiff, ) 3:10-CR-00082-LRH-RAM  
v. )  
HORACIO PENALOZA-MOLINA, ) ORDER  
Defendant. )  
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Before the court is Defendant Horacio Penalosa-Molina's motion pursuant to 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence (#27<sup>1</sup>). In response, the United States filed a motion to dismiss (#30) and an opposition (#31), and Defendant replied (#32).

**I. Procedural History**

On June 30, 2010, the grand jury for the District of Nevada returned an indictment charging Defendant with one count of unlawful reentry by a deported alien in violation of 8 U.S.C. § 1326(a). On October 12, 2010, Defendant pled guilty without a plea agreement. On February 7, 2011, this court sentenced Defendant to 57 months imprisonment. Defendant did not appeal. On December 27, 2011, Defendant, acting pro se, filed the instant motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence.

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<sup>1</sup>Refers to the court's docket entry number.

## II. Discussion

Pursuant to § 2255, a prisoner may move the court to vacate, set aside, or correct a sentence “upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack.” 28 U.S.C. § 2255(a). The prisoner is entitled to a hearing “[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief.” *Id.* § 2255(b).

As the government thoroughly recounts, the court finds that the facts, grounds for relief and legal arguments contained in Defendant's motion bear no relationship to the facts of his case. Instead, the motion appears to be nothing more than a compilation of stock claims and legal arguments taken from other, unrelated cases. The motion is therefore facially deficient and shall be denied. In an abundance of caution, however, the court shall grant Defendant leave to amend his motion to present any grounds for relief that actually relate to the facts of his case.

IT IS THEREFORE ORDERED that Defendant's motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence (#27) is DENIED and the United States' motion to dismiss (#30) is GRANTED without prejudice. Defendant shall have 60 days in which to file an amended motion under 28 U.S.C. § 2255.

IT IS SO ORDERED.

DATED this 23rd day of May, 2012.

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**LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE**